
(1982) 02 AHC CK 0009

In the Allahabad High Court

Case No : Criminal Misc. Case No. 3071 of 1979

Pradyumna Krishna and Others

APPELLANT

Vs

Om Prakash Rathi and Another

RESPONDENT

Date of Decision : 03-02-1982

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 482

Citation : (1982) 6 ACR 195

Hon'ble Judges : Satish Chandra, C.J;A.N. Varma, J

Bench : Division Bench

Judgement

Satish Chandra, C. J.

1. Being of the opinion that in view of the Single Judge decision of this Court in the case of Chitawan v. Mahboob Ilahi 1970 AWR 119 the matter requires reconsideration, a learned Single Judge has referred this Misc. Application u/s 482 Code of Criminal Procedure to a larger Bench. That is how the matter has come up before us.

2. It appears that in an application moved u/s 145 Code of Criminal Procedure the learned Magistrate held that Sri Om Prakash Rathi, who was one of the persons impleaded as an opposite party, was in possession and directed the property in question to be released in his favour and restraining the applicants from interfering with his possession.

3. Aggrieved by the Magistrate's order five of the applicants, except Bishan Chandra, filed a revision. Before the learned Sessions Judge an objection was taken up that since all the six original applicants had not filed the revision, the same was not maintainable. The learned Sessions Judge upheld this objection relying on the aforesaid Single Judge decision referred to above. The revision was dismissed as not maintainable for lack of impleadment of Bishan Chandra either as an applicant or opposite party in the memo of revision.

4. Aggrieved, all the six applicants came to this Court. When the present

application came up for hearing before the learned Single Judge, he was disinclined to agree with the view taken in the aforesaid Single Judge decision. In Chitawan and others case it was held that if one out of several applicants u/s 145 Code of Criminal Procedure has not joined in a revision, the same is not maintainable, because in the event of it being allowed, contradictory orders would come into existence, one passed in revision and the other passed by the learned Magistrate in relation to the person, who has not joined as an applicant in the revision.

5. For the purpose of deciding the present case it is not necessary to express any opinion on the correctness of the view taken in the case of Chitawan and others, referred to above.

6. In the present case we find that Bishan Chandra also moved an application before the learned Sessions Judge that the omission of his name in the memo of revision was by an oversight and a clerical error. This submission, however, did not find favour with the learned Sessions Judge. In our view, in order to do appropriate justice between the parties it was fit and proper that Bishan Chandra should have been permitted to be impleaded either as an applicant or as an opposite party in the revision filed before the learned Sessions Judge and then he should have disposed it of on merits. It was, in these circumstances, inappropriate for the learned Sessions Judge to have taken a technical view of the matter and dismissed the revision on the ground that it was not maintainable. The learned Sessions Judge had sufficient power to direct the impleadment of Bishan Chandra in the array of parties even if no efforts had been made by the applicants to implead him as an applicant in the revision.

7. The learned Counsel for the opposite parties submitted that in the present application the various other persons, who had originally been impleaded as opposite parties along with Sri Om Prakash Rathi, had not been impleaded and so the present application was defective. We are not impressed by this submission. According to the learned Magistrate only Om Prakash Rathi was found in possession of the property in question who had already been impleaded as an opposite party. In these circumstances, it was not necessary to drag all these persons up before this Court by way of impleading them as opposite parties. This application, in our opinion, is not defective on that score.

8. The result is that the application succeeds and is allowed. The impugned order of the learned Sessions Judge is set aside. The matter is sent back to the court below with the direction that he will allow the applicants to implead Bishan Chandra either as applicant or opposite party and then proceed to decide the revision on its merits afresh. The record may be sent down forthwith.